

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RODNEY K. KOEPKE,

Plaintiff,

v.

MACRO PLASTICS INC., a
California corporation,

Defendant.

NO. CV-11-3113-EFS

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND COMPLAINT AND
REMANDING CASE TO YAKIMA
COUNTY SUPERIOR COURT**

Before the Court, without oral argument, is Plaintiff Rodney Koepke's Motion for Leave to File First Amended Complaint, ECF No. [7](#). After reviewing the submissions of the parties, the record in this matter, and applicable authority, the Court is fully informed. For the reasons discussed below, the Court grants Mr. Koepke's motion and remands this case to the Yakima County Superior Court.

I. Background

This matter arises out of the August 10, 2010 termination of Mr. Koepke's employment with Macro Plastics. Mr. Koepke had filed a workmen's compensation claim with the Washington State Department of Labor and Industries due to carpal tunnel syndrome in both of his wrists, and was approved for "light duty" with certain workplace accommodations.

Mr. Koepke filed the Complaint in this matter in Yakima County Superior Court on October 12, 2011, alleging a common law tort claim for

1 wrongful discharge and claims for disability discrimination under RCW
2 49.60.030, 49.60.180(2) & (3), 49.60.120, and 49.60.210. ECF No. 1. On
3 November 14, 2011, Macro Plastics removed the matter to this Court,
4 asserting that the Court had jurisdiction to hear the case under 28
5 U.S.C. § 1332, the diversity jurisdiction statute.

6 Mr. Koepke filed the instant motion for leave to amend on February
7 29, 2012. ECF No. 7. Mr. Koepke seeks leave to amend in order to add
8 claims against Pete Morton, a manager for Defendant Macro Plastics. Macro
9 Plastics objects to Mr. Koepke's motion, arguing that Mr. Koepke seeks
10 to add Mr. Morton for the sole purpose of destroying diversity
11 jurisdiction and that the proposed amended complaint fails to state a
12 cognizable claim against Mr. Morton under the Washington Law Against
13 Discrimination. The parties agree that Mr. Morton is a Washington
14 resident, and that if Mr. Koepke is permitted to amend his Complaint, the
15 Court will no longer have jurisdiction over Mr. Koepke's state law
16 claims.

17 **II. Analysis**

18 A party may amend their complaint after a responsive pleading has
19 been served "only with the opposing party's written consent or the
20 court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give
21 leave when justice so requires." *Id.* "In the absence of any apparent
22 or declared reason—such as undue delay, bad faith or dilatory motive on
23 the part of the movant, repeated failure to cure deficiencies by
24 amendments previously allowed, undue prejudice to the opposing party by
25 virtue of allowance of the amendment, futility of amendment, etc.—the
26

1 leave sought should, as the rules require, be 'freely given.'" *Foman v.*
2 *Davis*, 371 U.S. 178, 182 (1962).

3 Under 28 U.S.C. § 1447, "[i]f after removal the plaintiff seeks to
4 join additional defendants whose joinder would destroy subject matter
5 jurisdiction, the court may deny joinder, or permit joinder and remand
6 the action to the State court." 28 U.S.C. § 1447(e). "The decision
7 regarding joinder of a diversity[-]destroying-defendant is left to the
8 discretion of the district court. . . ." *Newcombe v. Adolf Coors Co.*, 157
9 F.3d 686, 691 (9th Cir. 1998). In determining whether to exercise
10 discretion to permit the joinder of non-diverse parties, district courts
11 generally consider the following factors:

12 (1) whether the party sought to be joined is needed for just
13 adjudication and would be joined under Fed. Rule Civ. Proc.
14 [sic] 19(a); (2) whether the statute of limitations would
15 prevent the filing of a new action against the new defendant
16 should the court deny joinder; (3) whether there has been
17 unexplained delay in seeking the joinder; (4) whether the
18 joinder is solely for the purpose of defeating federal
19 jurisdiction; and (5) whether the claim against the new party
20 seems valid. Other factors . . . include; (6) the possible
21 prejudice that may result to any of the parties in the
22 litigation; (7) the closeness of the relationship between the
23 new and the old parties; (8) the effect of an amendment on the
24 court's jurisdiction; and (9) the new party's notice of the
25 pending action.

26 *Hardin v. Wal-Mart Stores, Inc.*, 813 F. Supp. 2d 1167, 1173-74 (E.D. Cal.
2011) (quoting *Oum v. Rite Aid Corp.*, No. CV 09-7741-GHK, 2009 WL 151510
at *3 (C.D. Cal. Jan. 20, 2009)).

Here, Macro Plastics argues that Mr. Koepke is engaging in improper
"forum-shopping," that is, intentionally attempting to defeat diversity
jurisdiction so that this matter will be remanded to state court. Mr.
Koepke responds that the refusal to allow him to amend "will deny him the

1 opportunity to pursue the full extent of his state law claims," and
2 asserts that he will be forced to pursue a parallel state court action
3 against Mr. Morton if leave to amend is denied. Mr. Koepke attributes
4 his delay in seeking leave to name Mr. Morton as a Defendant to the fact
5 that he only recently became aware of his claim against Mr. Morton upon
6 receipt of Macro Plastics' response to his discovery requests. Mr.
7 Koepke concedes that the statute of limitations would not bar his claims
8 against Mr. Morton if leave to amend is denied, but argues that the
9 remainder of the factors listed in *Hardin* favor granting leave to amend.

10 Under the circumstances, the Court finds plausible Mr. Koepke's
11 explanation of the reason for delay, and finds that Mr. Koepke is not
12 moving to amend for the sole purpose of defeating jurisdiction. Macro
13 Plastics has presented no evidence in support of its argument that Mr.
14 Koepke's motion to amend is motivated solely by a desire to manipulate
15 the forum, and even if Mr. Koepke were forum-shopping, the authority
16 Macro Plastics cites in support of its position does not mandate denial
17 of Mr. Koepke's motion. See *Carnegie-Mellon Univ. v. Cohill*, 484 U.S.
18 343, 357 (1988) ("If the plaintiff has attempted to manipulate the forum,
19 the court should take this behavior into account in determining whether
20 the balance of factors to be considered under the pendent jurisdiction
21 doctrine support a remand. . . ."); see also *Newcombe*, 157 F.3d at 691
22 (noting district court's discretion to permit joinder of a non-diverse
23 defendant). Furthermore, given the limited amount of discovery that has
24 occurred and the fact that there has been no substantive activity in the
25 case in this Court, the Court finds that Macro Plastics will not be
26 unduly prejudiced by amendment. And while Mr. Morton is not a necessary

1 party to this action under Rule 19, the Court gives due regard to Mr.
2 Koepke's stated desire to include claims against Mr. Morton in this
3 lawsuit. Finally, the Court rejects Macro Plastics' argument that
4 amendment would be futile because the proposed amended complaint does not
5 allege sufficient facts to state a claim for relief. See *Brown v. Scott*
6 *Paper Worldwide Co.*, 143 Wn.2d 349, 358 (2001) (finding that RCW
7 49.60.040(3) permits claims for individual supervisor liability). Viewing
8 these factors in light of the extreme liberality with which courts are
9 to approach motions to amend pleadings, the Court finds good cause to
10 permit Mr. Koepke to amend the Complaint. Accordingly, the Court grants
11 Mr. Koepke's motion for leave to amend; because Mr. Morton is a
12 Washington resident, the Court lacks subject matter jurisdiction over
13 this case and accordingly remands this matter to the Yakima County
14 Superior Court.

15 **III. Conclusion**

16 For the reasons discussed above, **IT IS HEREBY ORDERED:**

17 1. Mr. Koepke's Motion for Leave to File First Amended Complaint,
18 **ECF No. 7**, is **GRANTED**.

19 2. This matter is **REMANDED** to the Yakima County Superior Court of
20 the State of Washington, Civil Cause No. 11-2-03652-8.

21 3. All pending hearings and deadlines are **STRICKEN**.

22 4. This file shall be **CLOSED**.

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s/Edward F. Shea
EDWARD F. SHEA
United States District Judge